

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GEORGE P. REITZ, and
KAREN K. REITZ,

Plaintiffs,

vs.

Case No. 08-4131-SAC

USDA, FARM SERVICE AGENCY,

Defendant.

MEMORANDUM AND ORDER

This case seeking appellate review of a decision by the USDA, Farm Service Agency, comes before the court on the defendant's motion for leave to file portions of the record on CD. In support of its motion, defendant states that due to cost-saving measures no written transcript has been made, that an audio recording is available of "the prehearing held on June 3, 2008 and the hearing held on July 9, 2008," and that the hearing officer who issued the final agency determination on appeal cited to specific ques in the recordings to pinpoint his citations to the record. Local Rule 83.7.1(c) requires that "in review proceedings, the agency shall file the record with the clerk of this court ...The record shall be filed

conventionally, not electronically.” Under the Administrative Procedures Act, the record includes a transcript. See 5 U.S.C.A. § 556(e) (governing hearings conducted under APA sections 553 and 554, stating: “ The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties.”) This procedure, like another recently examined by the Tenth Circuit, assures the court of a record “that facilitates the meaningful and effective judicial review to which a petitioner is entitled.” *Witjaksono and Fnu v. Holder, United States Attorney General*, ___ F.3d ___, NO. 08-9540 (10th Cir. July 17, 2009) (emphasis in original).

The lack of a written transcript greatly increases the difficulty of this court’s task of meaningfully scrutinizing the proceedings below, as the court often reviews portions of the record not cited by counsel or by hearing officers, for various reasons. The court has no desire to change the defendant’s practice of not having a court reporter present during the hearings, but shall not grant defendant’s request to submit on appeal to this court a CD or other audio recording of the crucial proceedings below

without a written transcript.

IT IS THEREFORE ORDERED that defendant's motion for leave to file portions of the record solely on CD is denied.

Dated this 22nd day of July, 2009, Topeka, Kansas.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge